

**Senate Bill No. 1425**

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Passed the Senate August 30, 2008

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*Secretary of the Senate*

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Passed the Assembly August 22, 2008

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*Chief Clerk of the Assembly*

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This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2008, at \_\_\_\_\_ o'clock \_\_\_\_M.

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*Private Secretary of the Governor*

## CHAPTER \_\_\_\_\_

An act to amend Section 1798.24 of the Civil Code, and to add Sections 49079.5 and 49079.6 to the Education Code, relating to pupil data.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1425, Steinberg. Pupil data.

(1) Federal law requires schools and educational agencies receiving federal financial assistance to comply with specified provisions regarding the release of pupil data. State law prescribes additional rules relating to the authorized release of pupil data.

Under existing law, the State Department of Education is required to contract for the development of proposals to provide for the retention and analysis of longitudinal pupil achievement data on the tests administered pursuant to the Standardized Testing and Reporting Program (STAR), the English language development tests, and the high school exit exam. Existing law provides that this longitudinal achievement data is known as the California Longitudinal Pupil Achievement Data System. Under existing law, the California Longitudinal Pupil Achievement Data System is required to be used to accomplish specified goals, including providing school districts and the department access to the data necessary to comply with federal reporting requirements, as specified, providing a better means of evaluating educational progress and investments over time, providing local educational agencies information that can be used to improve pupil achievement, and providing an efficient, flexible, and secure means of maintaining longitudinal statewide pupil data.

This bill would authorize the department, to the extent permissible under the federal Family Educational Rights and Privacy Act (FERPA) and state law, to conduct pupil data management on behalf of local educational agencies. The bill would state the intent of the Legislature to accomplish specified objectives related to these provisions, including, but not limited to, complying with the United States Constitution and all applicable federal laws, including FERPA and its implementing regulations, the California Constitution, and all applicable state laws and their

implementing regulations, in order to protect pupil rights and privacy. The bill would authorize local educational agencies to access specified data via the California Longitudinal Pupil Achievement Data System (CALPADS), and, to the extent permissible under state and federal law, to share specified data via CALPADS. The bill would require the department, to the extent consistent with federal law, to establish, no earlier than July 1, 2009, an education data team to act as an institutional review board to review and respond to all requests for aggregate and nonidentifiable individual pupil data, as specified. The bill would require the department, to the extent feasible, to redirect department personnel for the purposes of the education data team rather than establishing new positions. The bill would make the department responsible for data management decisions for data under its jurisdiction and make the department and a local educational agency jointly liable for any data management decisions in which the department and a local educational agency participate jointly, as specified. The department would be required to adopt regulations for the education data team by July 1, 2009. The department would, with certain exceptions, be authorized to assess a fee on research applicants to cover prescribed costs.

The bill also would state the intent of the Legislature to convene a working group to make recommendations related to the ability of the state to collect, transfer, and use pupil record information and other educational data. The bill also would state the intent of the Legislature to obtain and examine existing literature, research, litigation, and other materials, including analyses of other states' approaches to balancing the benefits of increased access to individually identifiable pupil data and other education data against the increased risk of loss of privacy.

(2) Existing law prohibits a state agency from disclosing any personal information in a manner that would link the information disclosed to the individual to whom it pertains. Existing law provides exceptions to this prohibition, including authorizing a state agency to release personally identifiable data to a nonprofit educational institution conducting scientific research, provided the request for information is approved by the Committee for the Protection of Human Subjects (CPHS) for the California Health and Human Services Agency. Existing law authorizes the CPHS

to enter into written agreements to enable other institutional review boards to provide the required data security approvals.

This bill would require the CPHS to enter into a written agreement with the institutional review board to provide the required data security approvals for the release of data to researchers, as specified.

*The people of the State of California do enact as follows:*

SECTION 1. Section 1798.24 of the Civil Code is amended to read:

1798.24. No agency may disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the information is disclosed, as follows:

(a) To the individual to whom the information pertains.

(b) With the prior written voluntary consent of the individual to whom the record pertains, but only if that consent has been obtained not more than 30 days before the disclosure, or in the time limit agreed to by the individual in the written consent.

(c) To the duly appointed guardian or conservator of the individual or a person representing the individual if it can be proven with reasonable certainty through the possession of agency forms, documents or correspondence that this person is the authorized representative of the individual to whom the information pertains.

(d) To those officers, employees, attorneys, agents, or volunteers of the agency that has custody of the information if the disclosure is relevant and necessary in the ordinary course of the performance of their official duties and is related to the purpose for which the information was acquired.

(e) To a person, or to another agency where the transfer is necessary for the transferee agency to perform its constitutional or statutory duties, and the use is compatible with a purpose for which the information was collected and the use or transfer is accounted for in accordance with Section 1798.25. With respect to information transferred from a law enforcement or regulatory agency, or information transferred to another law enforcement or regulatory agency, a use is compatible if the use of the information requested is needed in an investigation of unlawful activity under the jurisdiction of the requesting agency or for licensing, certification, or regulatory purposes by that agency.

(f) To a governmental entity when required by state or federal law.

(g) Pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(h) To a person who has provided the agency with advance, adequate written assurance that the information will be used solely for statistical research or reporting purposes, but only if the information to be disclosed is in a form that will not identify any individual.

(i) Pursuant to a determination by the agency that maintains information that compelling circumstances exist that affect the health or safety of an individual, if upon the disclosure notification is transmitted to the individual to whom the information pertains at his or her last known address. Disclosure shall not be made if it is in conflict with other state or federal laws.

(j) To the State Archives as a record that has sufficient historical or other value to warrant its continued preservation by the California state government, or for evaluation by the Director of General Services or his or her designee to determine whether the record has further administrative, legal, or fiscal value.

(k) To any person pursuant to a subpoena, court order, or other compulsory legal process if, before the disclosure, the agency reasonably attempts to notify the individual to whom the record pertains, and if the notification is not prohibited by law.

(l) To any person pursuant to a search warrant.

(m) Pursuant to Article 3 (commencing with Section 1800) of Chapter 1 of Division 2 of the Vehicle Code.

(n) For the sole purpose of verifying and paying government health care service claims made pursuant to Division 9 (commencing with Section 10000) of the Welfare and Institutions Code.

(o) To a law enforcement or regulatory agency when required for an investigation of unlawful activity or for licensing, certification, or regulatory purposes, unless the disclosure is otherwise prohibited by law.

(p) To another person or governmental organization to the extent necessary to obtain information from the person or governmental organization as necessary for an investigation by the agency of a

failure to comply with a specific state law that the agency is responsible for enforcing.

(q) To an adopted person and is limited to general background information pertaining to the adopted person's natural parents, provided that the information does not include or reveal the identity of the natural parents.

(r) To a child or a grandchild of an adopted person and disclosure is limited to medically necessary information pertaining to the adopted person's natural parents. However, the information, or the process for obtaining the information, shall not include or reveal the identity of the natural parents. The State Department of Social Services shall adopt regulations governing the release of information pursuant to this subdivision by July 1, 1985. The regulations shall require licensed adoption agencies to provide the same services provided by the department as established by this subdivision.

(s) To a committee of the Legislature or to a Member of the Legislature, or his or her staff when authorized in writing by the member, where the member has permission to obtain the information from the individual to whom it pertains or where the member provides reasonable assurance that he or she is acting on behalf of the individual.

(t) (1) To the University of California or a nonprofit educational institution conducting scientific research, provided the request for information is approved by the Committee for the Protection of Human Subjects (CPHS) for the California Health and Human Services Agency (CHHSA) or an institutional review board, as authorized in paragraphs (4) and (5). The approval required under this subdivision shall include a review and determination that all the following criteria have been satisfied:

(A) The researcher has provided a plan sufficient to protect personal information from improper use and disclosures, including sufficient administrative, physical, and technical safeguards to protect personal information from reasonable anticipated threats to the security or confidentiality of the information.

(B) The researcher has provided a sufficient plan to destroy or return all personal information as soon as it is no longer needed for the research project, unless the researcher has demonstrated an ongoing need for the personal information for the research

project and has provided a long-term plan sufficient to protect the confidentiality of that information.

(C) The researcher has provided sufficient written assurances that the personal information will not be reused or disclosed to any other person or entity, or used in any manner, not approved in the research protocol, except as required by law or for authorized oversight of the research project.

(2) The CPHS or institutional review board shall, at a minimum, accomplish all of the following as part of its review and approval of the research project for the purpose of protecting personal information held in agency databases:

(A) Determine whether the requested personal information is needed to conduct the research.

(B) Permit access to personal information only if it is needed for the research project.

(C) Permit access only to the minimum necessary personal information needed for the research project.

(D) Require the assignment of unique subject codes that are not derived from personal information in lieu of social security numbers if the research can still be conducted without social security numbers.

(E) If feasible, and if cost, time, and technical expertise permit, require the agency to conduct a portion of the data processing for the researcher to minimize the release of personal information.

(3) Reasonable costs to the agency associated with the agency's process of protecting personal information under the conditions of CPHS approval may be billed to the researcher, including, but not limited to, the agency's costs for conducting a portion of the data processing for the researcher, removing personal information, encrypting or otherwise securing personal information, or assigning subject codes.

(4) The CPHS may enter into written agreements to enable other institutional review boards to provide the data security approvals required by this subdivision, provided the data security requirements set forth in this subdivision are satisfied.

(5) Notwithstanding paragraph (4), the CPHS shall enter into a written agreement with the institutional review board established pursuant to Section 49079.5 of the Education Code. The agreement shall authorize, commencing on July 1, 2009, or the date upon which the written agreement is executed, whichever is later, that

board to provide the data security approvals required by this subdivision, provided the data security requirements set forth in this subdivision and the act specified in paragraph (1) of subdivision (a) of Section 49079.5 of the Education Code are satisfied.

(u) To an insurer if authorized by Chapter 5 (commencing with Section 10900) of Division 4 of the Vehicle Code.

(v) Pursuant to Section 1909, 8009, or 18396 of the Financial Code.

This article shall not be construed to require the disclosure of personal information to the individual to whom the information pertains when that information may otherwise be withheld as set forth in Section 1798.40.

SEC. 2. Section 49079.5 is added to the Education Code, to read:

49079.5. (a) The Legislature recognizes that a longitudinal pupil data system could provide direct and tangible benefits to pupils, educators, policymakers, and the public. It is the intent of the Legislature, in enacting this section, to accomplish the following:

(1) Comply with the United States Constitution and all applicable federal laws, including the Family Educational Rights and Privacy Act of 2001 (20 U.S.C. Sec. 1232g) (FERPA) and its implementing regulations (34 C.F.R. 99).

(2) Comply with the California Constitution and all applicable state laws and their implementing regulations, including, but not limited to, Section 1798.24 of the Civil Code and subdivision (c) of Section 10601.5 of this code.

(3) Further an environment in which the department and the California Longitudinal Pupil Achievement Data System (CALPADS) serve as resources for local educational agencies.

(4) Promote a culture of continuous improvement through collaboration and informed decisionmaking at the classroom, school, district, state, and policymaker level.

(5) Minimize the anticipated workload increase on the department that may be generated by an increased number of data requests as CALPADS becomes operational, by establishing clear guidance on data access and an efficient process for responding to requests for access.

(6) Pursuant to FERPA and as defined in Section 1798.24 of the Civil Code, make nonidentifiable individual pupil data available to qualified researchers from nonprofit organizations while appropriately protecting the privacy of individual pupils.

(b) Commencing on July 1, 2009, and to the extent permissible under FERPA and its implementing regulations and Section 1798.24 of the Civil Code, the department may act on behalf of local educational agencies under FERPA, including providing access to nonidentifiable individual pupil data and protecting the security of pupil data.

(c) Commencing on July 1, 2009, and to the extent permissible under FERPA and its implementing regulations, the department, on behalf of local educational agencies, may release pupil data to qualified researchers from nonprofit organizations, pursuant to subdivision (t) of Section 1798.24 of the Civil Code.

(d) No earlier than July 1, 2009, the department shall establish an education data team within its staff, to the extent consistent with federal law, to act as an institutional review board pursuant to subdivision (t) of Section 1798.24 of the Civil Code, and to review and respond to all requests for aggregate and nonidentifiable individual pupil data. The department, to the extent feasible, shall redirect department personnel for the purposes of the education data team rather than establish new positions.

(1) Pursuant to subdivision (t) of Section 1798.24 of the Civil Code, the education data team shall enter into a signed agreement with the Committee for the Protection of Human Subjects for the California Health and Human Services Agency to enable the education data team to provide the data security approvals required by that section. The agreement shall authorize the education data team to release nonidentifiable individual pupil data to qualified researchers and other state and local agencies, as defined and permitted under state and federal law.

(2) The department shall commence preparations for the creation of the education data team at least one month before the CALPADS pilot program is scheduled to begin.

(3) By July 1, 2009, the department shall adopt regulations for the education data team that shall include, but not be limited to, all of the following:

(A) Processes for all of the following:

(i) Application for access to data.

(ii) Response to applications for access to data, including timelines.

(iii) Appeal of denials for access to data.

(B) Criteria to be used for approving the release of data, including, but not limited to, all of the following:

(i) The release of data to researchers from nonprofit organizations, pursuant to FERPA and subdivision (t) of Section 1798.24 of the Civil Code, that are conducting research for the purpose of improving instruction to pupils.

(ii) Limitations on data released, including, but not limited to, releasing to researchers only data necessary to meet research objectives.

(iii) Requiring an agreement by applicants to comply with state and federal privacy and disclosure laws and regulations, and existing laws regarding data control and security.

(C) (i) Any reasonable fees or charges that may be imposed upon research applicants to cover costs of responding to time-intensive requests.

(ii) Fees or charges imposed upon an applicant pursuant to this subparagraph shall not exceed the actual costs incurred by the department in responding to the applicant's request.

(iii) No fees or charges shall be imposed pursuant to this subparagraph upon any state agency, except for fees or charges related to the release of data for research purposes to the University of California, the California State University, or the Chancellor of the California Community Colleges.

(D) Rules for data recipients regarding data control and destruction of data after use, to guard against any misuse of data, including third-party transfer.

(e) A local educational agency may access data via CALPADS concerning pupils enrolled within the local educational agency or transferring to the local educational agency from another local educational agency.

(f) In order to promote a culture of collaboration and data analysis and to increase the identification and sharing of effective practices, local educational agencies may share data with each other via CALPADS to the extent permissible under state and federal law.

(g) The department is responsible for data management decisions for the data under its jurisdiction. The department, rather than a

local educational agency, shall be liable for its decisions relating to the management of data under its control according to applicable provisions of law. If the department and a local educational agency participate jointly in the management of data, both the department and the local educational agency shall be liable to the extent of their involvement according to applicable provisions of law. This subdivision does not limit the liability of a researcher who obtains data pursuant to this section and who releases that data in violation of either FERPA or its implementing regulations, or subdivision (t) of Section 1798.24 of the Civil Code.

SEC. 3. Section 49079.6 is added to the Education Code, to read:

49079.6. For purposes of this article, nonidentifiable individual pupil data that may be released includes data from the information systems established by Section 60900, but only to the extent that such data is provided using the unique pupil identification number required pursuant to paragraph (3) of subdivision (e) of Section 60900.

SEC. 4. It is the intent of the Legislature to accomplish both of the following prior to June 1, 2009:

(a) Convene a staff working group including bipartisan representation from the appropriate education and judiciary committees of the Legislature, the Legislative Analyst's Office, as well as other interested parties to make recommendations related to the ability of the state to collect, transfer, and use pupil record information and other education data, including, but not limited to, issues related to providing access to CALPADS data with respect to interactions between state and federal law regarding the issue of protection of pupil privacy.

(b) Obtain and examine existing literature, research, litigation, and other materials, including analyses of other states' approaches to balancing the benefits of increased access to individually identifiable pupil data and other education data against the increased risk of loss of privacy.









Approved \_\_\_\_\_, 2008

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*Governor*